

## Draft Responses to Stakeholder Deferral Process Questions/Requests – For Discussion

*Nevada Division of Environmental Protection*

ITEM	NATIONAL PRIORITIES LIST POTENTIALLY RELATED AUTHORITIES	NDEP EXPECTATION UNDER DEFERRAL
Financial Support for the Tribal Environmental Department	<ul style="list-style-type: none"> <li>CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a Tribal government to carry out response actions if the Tribe is deemed capable of carrying out and enforcing such actions.</li> </ul>	<ul style="list-style-type: none"> <li>NDEP agrees that the Tribal Environmental Department is an important component to the Site cleanup effort.</li> <li>NDEP requests information related to the financial support the Tribe has received from EPA and the Tribe's expenditures for Site related Remedial Investigation/Feasibility Study activities.</li> <li>If the Tribe receives continued financial support for its Environmental Department after Site deferral, NDEP will request that the Tribe segregate and separately account for this funding and its expenditures from any other funding the Tribe receives for Site related Remedial Investigation, Feasibility Study, Remedial Design, Remedial Action activities.</li> <li>NDEP requires Tribal assistance in finding legal support for the requested funding.</li> </ul>
Financial Support for Community Education through Tribal Education Department	<ul style="list-style-type: none"> <li>NCP §§ 300.430(c), 300.430(f)(3), 300.435(c) – Define community relations requirements for CERCLA response activities.</li> </ul>	<ul style="list-style-type: none"> <li>NDEP agrees that community education and involvement are vital to the success of Site response actions after deferral.</li> <li>The Deferral Agreement requires NDEP to implement a Community Involvement and Participation Plan for the Site.</li> <li>NDEP is open to considering Tribal community outreach as part of this plan, or, alternatively, sharing resources with the Tribe to educate Tribal community members about Site response actions.</li> <li>NDEP requires Tribal assistance in finding legal support for the requested funding.</li> </ul>

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Process for Tribal Review, Comment, Participation in and Approval of Work plans, Reports, and Other Site Decisional Documents	<ul style="list-style-type: none"> <li>• CERCLA § 126(a) – Provides that EPA and federal recognized Tribes have a government to government relationship.</li> <li>• CERCLA §104(c)(2) – Requires EPA to consult with tribes on remedial actions.</li> <li>• CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a Tribe to carry out response actions if the Tribe is deemed capable of carrying out such actions.</li> <li>• EPA Policy (1984) – Requires EPA to assure that Tribal interests are considered whenever EPA’s actions and/or decisions may affect reservation environments.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP considers Tribal consultation on decisional documents a key component to the success of Site deferral.</li> <li>• NDEP will follow EPA’s policy with respect to Tribal consultation on decisional documents.</li> <li>• NDEP requires Tribal assistance in finding legal support for granting the Tribe authority to approve decisional documents after Site deferral.</li> </ul>
Inclusion of Onsite Cultural Monitors	<ul style="list-style-type: none"> <li>• NHPA § 106 – Requires federal agencies to take into account the effect of their actions on any district, site, building, structure, or object that is included or is eligible to be included in the National Register of Historic Places.</li> <li>• 36 CFR §§ 800.3 – 800.13 – Outlines the process for consulting with Tribal Historic Preservation Offices and Tribes, identifying historic properties, determining whether and how such properties may be affected, and resolving adverse effects.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP acknowledges and understands that Tribal cultural resources must be protected and preserved if they are encountered during Site cleanup.</li> <li>• NDEP anticipates that issues related to protecting and preserving Tribal cultural resources will be evaluated in the remedial investigation and feasibility study.</li> <li>• NDEP will require a sufficient number of personnel, who work at the Site on a daily basis, receive cultural resource training through the Tribe.</li> </ul>
Preference for Local and Tribal Contractors Through State Bidding Process	<ul style="list-style-type: none"> <li>• CERCLA § 105(f) – Requires EPA to consider the availability of qualified minority firms in awarding contracts under CERCLA.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP is working with NDOT to identify the State’s bidding practices that provide opportunities for awarding contracts to qualified local and tribal contractors who bid on projects at the Site and employees to work at the Site.</li> <li>• NDEP requires Tribal assistance in finding legal support for this bidding practice as it relates to Tribal contractors.</li> </ul>

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Settle all NRDA Claims	<ul style="list-style-type: none"> <li>• CERCLA § 104(b)(2) – Requires EPA to coordinate with the natural resource trustees on assessments, investigations, and planning.</li> <li>• CERCLA § 122(j)(1) – Requires EPA to notify natural resource trustees of negotiations with potentially responsible parties and encourage natural resource trustees to participate in such negotiations.</li> <li>• NCP § 615(c)(1)(i-iv) – Defines the actions natural resource trustees may take after notification or discovery of an injury, loss, or threat to natural resources under their trusteeship.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP will enter into an agreement with ARC which preserves NDEP's natural resource damage claims after deferral.</li> <li>• NDEP encourages its co-trustees, including the Tribe, to pursue similar agreements with ARC.</li> <li>• NDEP understands that the natural resource trustees will continue to receive funding from the Department of Interior for natural resource damage assessment, investigation, and planning after Site deferral if the natural resources trustees provide sufficient assurance that their claims are properly preserved and that NRD assessment activities are making adequate progress.</li> <li>• NDEP will comply with CERCLA and NCP requirements of trustee notification and coordination after Site deferral.</li> </ul>
Complete a Site Wide, Comprehensive Storm Water Management Plan and Emergency Response Plan Prior to Deferral	<ul style="list-style-type: none"> <li>• NCP § 300.430 – Requires a remedial investigation, feasibility study, and remedy selection for operable units at the Site.</li> <li>• NCP § 300.430 – Requires remedial design and remedial action to be in conformance with the remedy selected and set forth in the ROD.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates that a Site wide comprehensive storm water management plan and Emergency Response Plan will be evaluated, if appropriate, as part of the CERCLA process and remedy selection.</li> </ul>
Use of CERCLA or UMTRA, Whichever Provides the Higher Level of Protection	<ul style="list-style-type: none"> <li>• The UMTRA and applicable regulations do not apply to the Site because it was not mined for uranium.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP and EPA will enter into a Deferral Agreement which requires Site cleanup to be CERCLA protective.</li> </ul>
Payment of All Current and Future Expenses (Including Historical) for Water Treatment on the Reservation	<ul style="list-style-type: none"> <li>• CERCLA § 126(a) – Provides that EPA and federal recognized tribes have a government to government relationship.</li> <li>• CERCLA § 104(c)(2) – Requires EPA to consult with tribes on remedial actions.</li> <li>• CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a tribe to carry out response actions if the</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates that the Tribe's request for payment of current and future water treatment at the reservation will be resolved, if appropriate, through remedial investigation, a feasibility study, and remedy selection and implementation; or, alternatively, through natural resource damage assessment, investigation, planning, and recovery.</li> </ul>

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	<p>tribe is deemed capable of carrying out such actions.</p> <ul style="list-style-type: none"> <li>• EPA Policy (1984) – Requires EPA to assure that tribal interests are considered whenever EPA’s actions and/or decisions may affect reservation environments.</li> <li>• NCP § 300.430 – Defines the requirements for remedial investigation, feasibility study, and remedy selection.</li> <li>• CERCLA § 104(b)(2) – Requires coordination with the natural resource trustees on assessments, investigations, and planning.</li> <li>• CERCLA § 122(j)(1) – Requires that natural resource trustees are notified of negotiations with potentially responsible parties and encouraged to participate in such negotiations.</li> <li>• NCP § 615(c)(1)(i-iv) – Defines the actions natural resource trustees may take after notification or discovery of an injury, loss, or threat to natural resources under their trusteeship.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP does not consider this issue as one that may be resolved prior to deferral.</li> </ul>

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Support Economic Development Plan as the Tribe Transitions to Less Water Intensive Industry	<ul style="list-style-type: none"> <li>• CERCLA 104(k)(1)(G) – Tribes are eligible for Brownfields funding.</li> <li>• CERCLA 101(39)(B) - Exclusions include a facility: (1) subject to a planned or ongoing CERCLA removal action, (2) listed or proposed for listing on the National Priorities List, (3) subject to a unilateral administrative order, court order, administrative order on consent, or consent decree under CERCLA.</li> <li>• CERCLA § 107(q)(1)(A) – Exempts from owner or operator liability persons that own land contaminated solely by a release from contiguous, or similarly situated property owned by someone else, if the person: (1) did not cause or contribute to the release or threatened release, (2) is not potentially liable or affiliated with any other person potentially liable, (3) exercises appropriate care in respect to the release, (4) provides full cooperation, assistance, and access to persons authorized to undertake the response action and natural resource restoration, (5) complies with all land use controls and does not impede the performance of any institutional controls, (6) complies with all information requests, (7) provides all the legally required notices regarding releases of hazardous substances, (8) conducted all appropriate inquiry at time of purchase and did not know or have reason to know of contamination.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates that the tribe will continue to be eligible for Brownfields funding through the EPA or the NDEP managed State Brownfields Program for areas of the reservation that are not being directly funded for assessment or cleanup under a deferral agreement scenario. Areas of the reservation that have either been directly or indirectly impacted by former activities from the Anaconda Mine site will most likely not be eligible for Brownfields funding if private funding is supporting assessment and cleanup.</li> </ul>

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Address Use of Mine Waste as Construction Materials in YPT Community (fill under houses, road base, etc.)	<ul style="list-style-type: none"> <li>• The EPA understands that this condition may exist on specific areas of the reservation, but does not have evidence pointing to an actual event when this may have occurred. This area of potential concern is not currently part of the ongoing remedial investigation under a CERCLA lead site.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP anticipates the Tribe's request to address the use of mine waste as construction materials in the Tribal community is an issue that will be resolved, if appropriate, through remedial investigation, a feasibility study, and remedy selection and implementation; or, alternatively, through natural resource damage assessment, investigation, planning, and restoration or recovery.</li> <li>• NDEP does not consider this issue as one that may be resolved prior to deferral.</li> </ul>
Tribal Approval of All Seed Mixes and other Components of Revegetation Plans	<ul style="list-style-type: none"> <li>• CERCLA § 126(a) – Provides that EPA and federal recognized tribes have a government to government relationship.</li> <li>• CERCLA §104(c)(2) – Requires EPA to consult with tribes on remedial actions.</li> <li>• CERCLA § 104(d) – Authorizes EPA to enter into a cooperative agreement with a tribe to carry out response actions if the tribe is deemed capable of carrying out such actions.</li> <li>• EPA Policy (1984) – Requires EPA to assure that tribal interests are considered whenever EPA's actions and/or decisions may affect reservation environments.</li> </ul>	<ul style="list-style-type: none"> <li>• NDEP considers Tribal consultation on decisional documents a key component to the success of Site deferral.</li> <li>• NDEP will follow EPA's policy with respect to Tribal consultation on decisional documents.</li> <li>• NDEP requires Tribal assistance in finding legal support for its request to be granted authority to approve decisional documents after Site deferral.</li> </ul>
Is the timeframe for the deferral process too compressed?		It is anticipated the EPA will be making a final decision on deferring final listing on the NPL in mid-August 2017, since requests for NPL listing are expected, based on past experience, to be published in the Federal Register in September 2017. NDEP has been working with Anaconda Mine site stakeholders since March 2017 to identify and understand if there are any significant and valid concerns to the proposed deferral path. NDEP will

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		continue to work with stakeholders into early August until it is time for the EPA to decide whether there is a viable option for deferral or to continue on the NPL track. NDEP believes that the 4-5 months available to document the level of community support for this option is acceptable.
When is NDEP expecting to supply draft final documents for stakeholder review?		NDEP has developed and distributed a deferral process schedule to provide an estimated time when documents will be available for review and comment. NDEP will continue to update the schedule as necessary.
Request for employment on cleanup activities from the Community/Tribal Employment Office.		NDEP supports this opportunity and is in discussion with NDOT to understand the process they've developed, which we understand has been successful in the past. NDEP plans to recommend this procurement process to contractors, if it appears viable.
Will EPA continue to have the lead/or final regulatory authority over the site in a manner acceptable to CERCLA.		Under the proposed deferral agreement, the State would be the lead regulatory authority, and the EPA will periodically review and be briefed by NDEP on site progress to determine the response is progressing adequately and remains CERCLA-protective. In this scenario, the site work will continue to be conducted in a CERCLA protective manner. The EPA will have an opportunity to review NDEP's remedy certification and completion report and other documents as requested. EPA may require further action if it determines the response is not progressing adequately or is not CERCLA-protective.
Will EPA regulatory authority be over all the Operable Units or just OU8?		Under the proposed deferral agreement, the State will have regulatory authority over each operable unit at the Site including OU-8.

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Will EPA have site visits to inspect the work being done?		NDEP will share information with EPA on a regular basis, and if they request a site visit NDEP will arrange and coordinate that visit.
Will the site stay on the Region 9 Superfund site list until it is cleaned up meeting CERCLA standards?		The Anaconda Copper Mine Site will remain on the CERCLIS list, but will not be on the NPL list. As discussed above, after the remedy is deemed complete and CERCLA protective the EPA will not evaluate the Site further for NPL listing or another response unless and until EPA receives new information of a release or potential release posing a substantial threat to human health or the environment.
Will our expectations and criteria be met by using CERCLA cleanup requirements?		Yes, CERCLA protective criteria will be established and followed, as well as applicable CERCLA guidance.
Will the Draft Plan match the key components, process and compliance criteria of a CERCLA listed site cleanup?		All closure plans will follow and meet CERCLA protective requirements.
Does the State have Remedial Action Requirements (RAOs) like EPA does? We would want to see a cleanup plan that uses these objectives.		Yes, the State will utilize remedial action objectives that are CERCLA protective. At larger state lead cleanups, NDEP uses a remedial action objective approach and can provide some examples of state lead cleanups that use this approach.
Will the work plans have a schedule for remediation of the site with time line for meeting work and deliverables along with a penalty system for delays and unacceptable work products to be met? We do not want to see plans that are for stages of work that will go over a long period of time. We are concerned with this issue because the NDEP OU8 closure plan had scheduling through 2025 which seems too long.		Yes, there will be a remediation and compliance schedule established for all components of Site work. There will be stipulated penalties for failure to meet deadlines or comply with approved plans in the Interim Administrative Order on Consent between NDEP and ARC. NDEP is discussing plans to perform the cleanup actions more holistically for the entire Site to gain efficiency as well as produce a faster final closure for the entire Site.



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What involvement will the EPA have in this evolving process?		The EPA will be evaluating public acceptance of this proposed deferral path, reviewing documents and agreements establishing rules of engagement between NDEP and ARC for a CERCLA protective approach to the site cleanup, and identifying if there are any valid and significant concerns to the deferral path.
Does the EPA still have regulatory authority over the site?		The EPA will have lead regulatory authority over the site until a deferral agreement is signed, at which time NDEP will assume the lead role and EPA will review site activities on a periodic basis to determine if the State's response is making adequate progress and remains CERCLA-protective.
Will remediation plans need to have the support of Region IX EPA?		No, but EPA will be briefed on remediation plans. If EPA determines the response is not progressing adequately or does not remain CERCLA-protective, EPA reserves the authority to terminate the Deferral Agreement and require response actions.
What standards for cleanup will be included? Are those different than what the EPA would require?		The standards for cleanup will be the same for NDEP.
The staff of the NDEP has plenty to do already. If the NDEP is the primary oversight agency, who will pay for the additional staff time. How many additional staff FTE's will be allocated to the Yerington Mine?		ARC will be reimbursing NDEP for staff time and contract technical support necessary to provide oversight for the cleanup. NDEP anticipates that at least two additional staff positions and specialized technical support contractors will be required to support project oversight.
Under Superfund status, funding is (presently) potentially available for remediation of portions of the site that Arimetco created. Are these portions of the site going to be remediated? Who will pay for this work?		Remediation of the Arimetco orphan share is one of the highest priorities for the site and will be the focus of capping and closure. ARC will be providing the private funding source for the largest financial share of the closure costs with the State providing a cost share in the same amount as would be required

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<p>EPA has requirements for public involvement, education, and notification of activities that will occur on the site. What sort of process will the NDEP use to ensure that the public knows what is going on at the site.</p>		<p>under an NPL listed site scenario.</p> <p>NDEP will ensure public involvement that is substantially similar to the intent of the National Contingency Plan, in accordance with the Community Involvement and Participation Plan finalized for the Site. NDEP will prepare a draft Community Involvement and Participation Plan (Plan) within 90–days after this Deferral Agreement is executed. The public will have 30 days to review the Plan and provide comments. NDEP will prepare a final Plan, 45 days after the public review and comment period closes. The Plan will be designed to satisfy the requirements of the NPL Deferral Guidance, NDEP’s regulations, and the unique needs of the Site and surrounding community. NDEP will also ensure the following actions are undertaken:</p> <ol style="list-style-type: none"> <li>1. Site files will be maintained at NDEP offices located at 901 South Stewart Street, Carson City, Nevada 89701.</li> <li>2. Site related documents will be available at one or more locations near the Site.</li> <li>3. Site related information will be provided to community groups.</li> <li>4. Through the Plan, the affected community will be able to acquire technical assistance in interpreting information with regard to the nature of the hazard, investigations, and studies conducted, and implementation decisions at the Site.</li> </ol>

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Will a schedule for remediation activities be produced early on in the process? As everyone is aware, a large amount of work on the site has been completed. How will the schedule be altered to allow the remediation to move forward under NDEP oversight?		There will be a remediation and compliance schedule established early on for all components of Site work both in the deferral agreement and in more detail in the Interim Administrative Order on Consent between NDEP and ARC. Under a deferral path and State lead, a defined schedule for overall site closure will be established.
The pit lake at Yerington presently (probably) violates Nevada pit lake criteria for protection of avian wildlife (selenium). Will the pit lake be considered in the remediation of the site to allow it to be potentially used as a recreational resource, or otherwise be treated to remove the wildlife threat?		The remedy for the pit lake (OU-2) will be developed based on the results of the RI/FS and human health and ecological risk assessments as part of the site-wide remedy. All exposure pathways will be evaluated.
Recognizing that a copper ore body potentially exists at the site, will this be included in the ultimate remediation plans.		The State acknowledges that the potential for re-mining exists. As is the case with managing all sites (including NPL sites) under CERCLA, remediation plans will need to take into account anticipated future land uses, including re-mining. This consideration will also be reflected in any institutional controls such as land use restrictions and future soil management plans, to ensure that any future activities remain protective.